



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service  
TE:GE EO Examinations  
1100 Commerce Street  
Dallas, Texas 75242

November 18, 2009

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ORG  
ADDRESS

UIL: 501.04-00

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita B. Lough  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 6018  
Report of Examination  
Envelope

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit #1
Name of Taxpayer [REDACTED]		Year/Period Ended [REDACTED]

**Issue:** Does [REDACTED] qualifies for exemption under Section 501(c)(4) of the Internal Revenue Code of 1986.

**Facts:** [REDACTED] was incorporated in the State of [REDACTED]. The Articles of Incorporation include the development's rules regarding what association can or cannot do. This includes the primary purpose of the association in providing maintenance, preservation and control of the residence lots or spaces and common area with in a certain tract of real property. The community is comprised of [REDACTED] homes. All owners are required to be members of the association and pay monthly dues of \$55.00 for a single lot and \$82.50 for a double lot. The organization also charges \$20.00 for an emergency fund charge. The organization charges a deposit of \$125.00 for gas and water usage. The association also charges a small fee to clean property when the owner fails to follow the rules as noted in the association bylaws.

As stated in the Bylaws the Association has the power, duty and responsibility of administering and enforcing the covenants, conditions, restrictions, easements, uses limitations, obligations and all other provisions set forth in the Declaration, the Bylaws of the Associations, and supplements and amendments. The association has the right to establish, make and enforce compliance with such reasonable rules and regulations as may be necessary for the operation, use and occupancy of the properties with the right to amend same from time to time.

The association also has the right to construct, manage, maintain keep in good order, condition and repair all of the common property and all items of common personal property used by the Owners in the enjoyment of the Common Property.

The association provides maintenance and improvements to the common areas in the development including the office building, swimming pool, play areas, dumpster, meters and roads. The association is responsible for maintaining the common areas to ensure compliance with the City [REDACTED]. Residents are responsible for the upkeep of the exterior of their homes. The association normally does not maintain the exterior of the member's property, but if a member fails to keep the property clean as noted in the Declaration after several warning notices the member will be charged a fee and be billed at a feasible rate for the services.

The swimming pool and common areas are not open to the general public for the following reasons: The general public can only utilize the pool if they are a guest to a member. The member must accompany the nonmember or if a pool pass is provided only two nonmembers allowed per pool pass. The association conducts meetings to discuss the safety and repairs of the common areas. The association publishes a newsletter to inform

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members of upcoming or proposed maintenance projects and to address any concerns voiced by residents. The newsletters are distributed to the members.

The pool and play area's is a benefit to members only. The access to the park is considered private. There are no security officers or gates just a gate around the swimming pool. I did not notice a sign that said private property around the pool. The association does pay for a security system to monitor the office building, dumpster and the swimming pool.

The access to the community is private one way in and one way out.

The association's receipts/expenses are distributed as follows: At least 60% of the gross income of the Association for any taxable year shall consist solely of amounts received as membership dues, fees, or assessments from Unit Owner; At least 90% of the expenditures of the Associations for any taxable year shall be for the acquisition, construction, management, maintenance, and care of Association property.

**Law:** Section 501(c)(4) of the Internal Revenue Code of 1986 provides for exemption from Federal income tax of civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community, i.e., for the purposes of bringing about civic betterment and social improvements.

In Revenue Ruling 74-17, 1974-1 CB 130, (Jan. 01, 1974), the Service held that a organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

In Revenue Ruling 74-99, 1974-1 CB 131, (Jan. 01, 1974), the Service held that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

In *Commissioner v. Lake Forest, Inc.*, 305 F. 2d 814 (1962), it was held that a corporation that provided housing on a cooperative basis lacked the necessary requirements of an

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organization described in section 501(c)(4) of the Code. The court held the operation to be a private self-help enterprise with only an incidental benefit to the community as a whole.

The court also held that the organization is operated primarily for the private benefit of members and any benefits to the community are not sufficient to meet the requirement of the regulation that the organization be operated primarily for the common good and general welfare of the people of the community.

**Government's Position:** Based on the applicable law and facts the [REDACTED] is not operating primarily for social welfare within the meaning of § IRC 501(c)(4), if it restricts access by the general public to its "common" areas such as recreational facilities, streets, sidewalks and green areas. The homeowner's association is operating primarily for the mutual benefit of its members.

**Taxpayer's Position:** [REDACTED] agrees to the revocation of its exempt status from as organization described in Section 501(c)(4). The proposed effective date of the revocation is [REDACTED]

**Conclusion:** [REDACTED] was granted exemption as an organization described in the Internal Revenue Code Section 501(c)(4), it is obvious that the facilities and common areas maintained by the association are not open to the general public, but rather restricted to or primarily for the benefit of its members. This organization does not qualify for exemption under Section 501(c)(4) of the Internal Revenue Code of 1986 because it is not promoting social welfare within the meaning of the IRC & Regulations. Since you will no longer be an exempt organization, you will be required to file Federal income tax returns on Form 1120-H, *U. S Income Tax Return for Homeowners Associations*. Forms 1120-H should be filed for years ended [REDACTED] and subsequent years.